



State of Utah

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5 September 2001

LEE SIM

Mr. Ron Roberts
Distribution Commissioner
PO Box 605
BEAVER UT 84713

RECEIVED
SEP - 7 2001
WATER RIGHTS
SALT LAKE

RE: BEAVER RIVER DECREE / AWARD NO. 91

Ronnie:

In response to your telephone inquiry of 23 August, I have taken some time to research the referenced portion of the Beaver River Decree (Civil No. 625, 13 November 1931, hereafter "BRD"). The subject award appears at page 39 of the original BRD and is followed by the following language:

The two foregoing rights are not entitled to any water until all 1870 and 1890 rights below the Patterson Dam from the Beaver River have been satisfied in full, exclusive, however, of the right of the Duluth Land Company, which is subject to such rights.

Later, on 11 January 1933, the court issued one of several amendments to the original BRD. In a document captioned "Amendment to and Modification of Decree" of said date, the language following Award 91 was changed to read as follows:

The foregoing right, No. 91, is not entitled to any water until all 1870 and 1890 rights below the Patterson Dam from the Beaver River have been satisfied in full, exclusive, however, of the right of the Duluth Land Company, which is subject to such rights.

I found nothing to explain why Award No. 90 was excluded from the special provision, but that is what the 1933 amendment did.

The special condition on Award 91 appears to be related to two other parts of the BRD. The **first part** is a short paragraph on page 37 following Award 86(b). This paragraph says that, despite their 1870 priority dates, Awards 85 and 86 are not to be pro rated with other rights on the Beaver River downstream of them. The **second part** is on pages 41 and 42 and describes to the manner in which a "special distribution group" is to be handled, being the 1870-priority rights between the Barton Ditch and Rocky Ford points of diversion (Awards 87 through 96).

Attached to this letter is a table containing information related to Awards 87 through 96. You can refer to this table as you read my interpretation of the special restriction on Award 90.

You will note that Rocky Ford was decreed a flow of 31.0 cfs under Award 96(b) with 1870 priority. As decreed beginning at page 41, that particular right is not to be included in the pro rata distribution of the 1870 rights between the dates of April 1 and June 1. After June 1, the 31.0 cfs is to be included in the pro rata distribution calculation. Also, after June 1, an additional 4½ cfs is to be calculated into the distribution of the 1870 rights, but without including the 31.0 cfs. The right-hand column in the attached table contains the pro rata basis on which the additional 4½ cfs would be distributed. Apparently this additional 4½ cfs is considered to be 1870 water and comes ahead of the 1903 rights in Awards 90 and 91.

You will also note from the table that, except for Awards 90 and 91, all Awards 87 through 96(a) between the Barton Ditch and the Rocky Ford diversions are 1870 rights. So, the logical question that comes to mind is: "Why did the court include this special condition on Awards 90 and 91, anyway?"

The answer seems to be found in the manner of distribution of Award 102 to the Duluth Land Co. on page 46 of the BRD. Evidently, this 1890-priority right for 35.05 cfs is to be diverted with and is to be used on part of the acreage described under Rocky Ford's Award 96(a). Award 102 was excluded from the "special distribution group" described on pages 41 and 42 of the decree, but the language after Award 91, before it was amended, said that all other 1870/1890 rights below the Patterson Dam were to be satisfied before either 1903-priority right got any water. When the 1933 amendment was made, apparently Award 90 was made a part of the "special distribution group", but Award 91 was still excluded.

The bottom line, it appears, is this:

For Award 90, no water is to be delivered until all 1870 rights in the "special distribution group" have been satisfied (48.74 cfs), plus the 31.0 cfs for Award 96(b) and the additional 4½ cfs for the remaining 1870 rights, being a total of 84.24 cfs.

For Award 91, no water is to be delivered until all earlier priority (pre-1903) Beaver River rights below the Patterson Dam have been satisfied, being 84.24 cfs as detailed above, plus 1.0 cfs for Award 85, 0.47 cfs for Award 86, and 0.25 cfs under Award 101, being a total of 85.96 cfs.

Award 102, despite having an 1890-priority, appears to be subordinated to ("subject to") the 1903-priority rights in Awards 90 and 91. So, this right is to be delivered water only after all 1870 rights have been satisfied, being the total of 85.96 cfs detailed above, plus 0.63 cfs for Award 90 and 1.5 cfs for Award 91, being a total of 88.09 cfs.

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For what it's worth, there's my best shot at it. I have heard "stories" that the folks at Rocky Ford have worked out some other distribution arrangements related to their rights under Award 96. I have never seen anything in writing, but I'm told it exists. Maybe you know more about that. Unless there are some modifying arrangements, however, this appears to be the way in which the rights below the Patterson Dam on the Beaver River are to be distributed.

I am sending a copy of this letter to the Attorney General's office for Natural Resources and requesting that they review my interpretation and let me know if I have missed or misinterpreted something. This may take a while, so I'd suggest you keep doing what you've been doing on these rights for the time being. If you are facing some specific problems or challenges and want to discuss them, please give me a call and we'll get you some help.

Sincerely,



Kerry Carpenter, P.E.
Region Engineer

pc: Lee Sim, P.E. / Assistant State Engineer - Distribution
Ward Wagstaff / Assistant Attorney General / DNR
BRD File

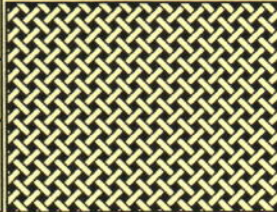
BRD AWARD NO.	AWARD DECREED TO:	PRIORITY DATE	DECREED FLOW	% OF 1870 RIGHTS BY FLOW ¹
87	Barton Ditch	1870	10.0 cfs	20.52% / 0.923 cfs
88	Price & Thomas	1870	0.33 cfs	0.68% / 0.030 cfs
89	Aberdare Canal	1870	13.48 cfs ²	27.66% / 1.245 cfs
90	Crawford / Walker's	1903	0.63 cfs	Not Applicable
91	Fred Levi	1903	1.5 cfs	Not Applicable
92	Emerson Ditch	1870	3.12 cfs	6.40% / 0.288 cfs
93	South Ditch	1870	2.88 cfs	5.91% / 0.266 cfs
94	Furnace Ditch	1870	7.57 cfs	15.53% / 0.699 cfs
95	Hay Ditch	1870	1.69 cfs	3.47% / 0.156 cfs
96 (a)	Rocky Ford	1870	9.67 cfs	19.84% / 0.893 cfs
96 (b)	Rocky Ford	1870	31.0 cfs	Not Applicable
Total 1870 flow excluding Award 96(b)			48.74 cfs	100% / 4.50 cfs
Total 1870 flow excluding Award 96(b), plus 4½ cfs			53.24 cfs	
Total 1870 flow including Award 96(b), plus 4½ cfs			84.24 cfs	
Total 1870 & 1903 flow including Awards 90, 91 and 96(b), plus 4½ cfs			86.37 cfs	

TABLE OF BEAVER RIVER DECREE AWARDS BETWEEN THE BARTON DITCH AND ROCKY FORD

(Attachment to letter to Distribution Commissioner Ron Roberts dated 05 September 2001)

Refer to decreed distribution schedule set forth on pages 41 and 42 of the Beaver River Decree, Civil No. 625 (13 November 1931, as amended 11 January 1933).

¹This percentage would constitute the pro rata basis for distribution of the additional 4½ cfs decreed for 1870 rights in BRD, pages 41-42, Awards 87-96(a); the second figure in this column is the portion of the 4½ cfs that would be added to the decreed flow on the basis of the percentage given.

²Originally decreed as 13.37 cfs; amended by "Amendment. . ." of 11 January 1933.